

§ 20.5

15 CFR Subtitle A (1–1–15 Edition)

§ 20.5 Exceptions to the rules.

(a) *Normal operations or statutory objective of any program or activity.* A recipient is permitted to take an action otherwise prohibited by § 20.4 if the action reasonably considers age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action meets this standard if:

(1) Age is used as a measure or approximation of one or more other characteristics; and

(2) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective or the program or activity; and

(3) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(4) The other characteristic(s) are impractical to measure directly on an individual bases.

(b) *Reasonable factors other than age.* A recipient is permitted to take an action otherwise prohibited by § 20.4 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 20.6 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in § 20.5 is on the recipient of Federal financial assistance.

Subpart C—Responsibilities of DOC Recipients

§ 20.7 General responsibilities.

Each DOC recipient has primary responsibility to ensure that its programs or activities are in compliance with the Act, the general regulations, and these regulations, and shall take steps to eliminate violation of the Act.

(a) Each DOC recipient will provide an assurance that the program or activity for which it is receiving Federal

financial assistance will be conducted in compliance with all requirements for the Act and these and other DOC regulations. A recipient also has responsibility to maintain records, provide information, and to afford DOC reasonable access to its records and facilities to the extent necessary to determine whether it is in compliance with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) To assess the recipient's compliance with the Act, DOC may, as part of a compliance review under § 20.10 or a complaint investigation under § 20.11, require a recipient employing the equivalent or 15 or more employees, to complete, in a manner specified by the responsible Department official, a written self-evaluation of any age distinction imposed in its program or activity receiving Federal financial assistance from DOC.

(2) Whenever an assessment indicates a violation of the Act and the DOC regulations, the recipient shall take corrective action.

§ 20.8 Notice to subrecipients.

Where a recipient passes on Federal financial assistance from DOC to subrecipients, the recipient shall give subrecipients written notice of their obligations under the Act and these regulations.

§ 20.9 Information requirements.

Upon DOC's request, each recipient shall provide access and make information available for DOC to determine whether the recipient is complying with the Act and these regulations.

Subpart D—Investigation, Conciliation, and Enforcement Procedures

§ 20.10 Compliance reviews.

(a) DOC may conduct compliance reviews and pre-award reviews or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. DOC may conduct such review even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine